

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARINGS-September 15, 1971
November 17, 1971

Appeal No. 10876 Rock Creek East Neighborhood League, Inc.,
appellant.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

On motion duly made, seconded and carried with the
absence of Samuel Scrivener, Jr. and Howard H. Mackey, Arthur
B. Hatton dissenting, the following Order of the Board was
entered at the meeting of November 23, 1971.

EFFECTIVE DATE OF ORDER - Feb. 3, 1972

ORDERED:

That upon rehearing, this appeal from a decision of the
Zoning Administrator given on September 30, 1960, ruling that
six (6) persons including personal care patients (personal
care homes) can occupy a house in the single family districts
as a family defined in Section 1202 of the Zoning Regulations
is granted and the Zoning Administrator's ruling is reversed.

FINDING OF FACTS:

1. The subject properties are located in R-1-A and R-1-B
Districts.
2. This appeal was first heard at public hearing on
September 15, 1971. At executive meeting on September 21, 1971
the Board overruled the Zoning Administrator by a vote of 2-1,
Mr. Hatton dissenting and Messrs. Scrivener and Mackey absent.
3. As this appeal did not receive a majority vote the
case was reheard at public hearing on November 17, 1971.
4. On September 30, 1960 Mr. C.T. Nottingham, Superin-
tendent, Licenses and Permit Division, issued a memorandum to
all employees of the License Branch, Permit and Enforcement
Branch, that the definition of a family as outlined in Section
8803 of the Zoning Regulations will apply to all personal care
homes whether located in a single dwelling or in a fully fire-
resistive building.

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5. Mr. Nottingham's memorandum further stated that "In all cases, without exception, the total number of occupants of the home, including both the members of the family and the patients, CANNOT EXCEED A TOTAL OF SIX (6) PERSONS. Since in all cases, Personal Care Homes cannot exceed a total of six (6) persons, and is therefore classified as a one family dwelling, NO CERTIFICATE OF OCCUPANCY IS EVER REQUIRED"

6. The Crestwood Citizens Association supported the appeal of Rock Creek East Neighborhood League, Inc.

7. Appellants contend that the definition of a family in the Zoning Regulations is being overwhelmed by the inclusion of personal care homes as a family institution and not a convalescent institution as would be applicable to another type of zoning.

8. Evidence was introduced that personal care homes require a license from the Department of Licenses and Inspections while a single family dwelling does not require such license.

9. The license inspector stated that personal care homes do not require a certificate of occupancy, but does require a license.

10. There are a total of 89 personal care homes licensed in the District of Columbia, totaling 318 beds. As of this date, there were also 22 applications pending, and of the 89 personal care homes, 54 were in restrictive areas.

11. The file contains numerous letters requesting the Board of Zoning Adjustment to uphold the Zoning Administrator, as well as letters in opposition to the ruling of the Zoning Administrator.

12. Considerable objection to the granting of this appeal was registered at the public hearing.

OPINION:

The only question presented to the Board for determination in this appeal is whether, on the facts of record, the Zoning Administrator erred in his ruling that six (6) persons, including personal care patients (personal care homes) can occupy a house in the single family districts as a "family" as that word is defined in Section 1202 of the Zoning Regulations.

In construing the Regulations, the advantages of a personal care home were not considered by the Board.

It is the opinion of a majority of the Board that the ruling of the Zoning Administrator was in error. The definition of a family in the Zoning Regulations reads:

"One or more persons related by blood, marriage, or adoption, or not more than six persons who are not so related, living together as a single housekeeping unit, using certain rooms and housekeeping facilities in common, provided that the term family shall include a religious community having not more than fifteen members."

The definition of a convalescent or nursing home in the Zoning Regulations reads:

"A building, except a hospital, used for the care, treatment or lodging of three or more persons not related by blood or marriage within the third degree of blood consanguinity to the operator, or manager thereof, who are either infirm, senile, afflicted, or suffering from any chronic physical or mental disease, illness, or affliction, or who are drug

or alcoholic addicts, or who are confined to bed or chair, or who require or receive special diet, individual feeding in special rooms, assistance in feeding, dressing, walking, or toileting, or assistance in any other ordinary daily activities of live."

We interpret the definition of a family of non-related persons to mean six persons who live together as a house-keeping unit for the mutual benefit of all parties, on a more or less continuing basis.

We also find that the operation of a personal care home is clearly a business, and as such requires a license to be issued by the Department of Licences and Inspections of the District of Columbia.

We therefore conclude that personal care homes should not occupy a house in the single family districts as a "family" as that word is defined in Section 1202 of the Zoning Regulations. The Zoning Administrator is therefore reversed.

STAY EFFECTIVE DATE OF THE ORDER

On November 24, 1971 the Honorable Mayor Walter E. Washington, as Chairman of the District of Columbia Zoning Commission, requested the Board of Zoning Adjustment to stay the effectiveness of its action in this matter until the Zoning Commission has had an opportunity to amend the Zoning Regulations or take necessary steps to resolve the issue.

At its meeting held on December 14, 1971 the Board voted to stay the effective date of its order. The stay is granted for 120 days after the effective date of this order to permit the Zoning Commission to amend the Zoning Regulations or take other steps.

CONCURRING OPINION BY WILLIAM S. HARPS

The single most important fact in this case was Finding No. 9: Personal Care Homes require a license.

No single family dwelling in the District of Columbia, legally occupied, with or without the permitted two roomers or two boarders, requires a license.

Whether or not the occupants of a personal care home pay, as may a permitted roomer or boarder, was not the most important or most emphasized fact in this member's opinion.

Further, I do not believe a personal care home or convalescent home should be permitted in any single family zoned neighborhood by the Zoning Administrator. In such neighborhoods, the neighbors should be notified and be given a fair chance to air their views at a public hearing before the Board of Zoning Adjustment. Based on the facts adduced at a public hearing, the Board of Zoning Adjustment should make the decision.

DISSENTING OPINION BY ARTHUR B. HATTON

The extent to which extended care patients use the house-keeping facilities in common depends only upon the physical condition of the individuals involved. This is no different than in any other family situation where one or more members may be confined to one part of the house because of physical disability.

In this case, the definitions of rooming house and boarding house should be taken into account together with Section 3101.53 which permits two roomers or boarders as an accessory use in the most restricted residential district.

"3101.53. A maximum of two roomers or boarders in the main building."

"Boarding House: A building or part thereof other than a motel, hotel, or private club, where, accommodations, meals, or lodgings and meals, are provided for three or more guests on a weekly or monthly basis."

"Rooming House: A building or part thereof, other than a motel, hotel, or private club, which provides sleeping accommodations for three or more persons who are not members of the immediate family of the operator or manager, and such accommodations are not under the exclusive control of the occupants thereof."

The majority opinion emphasizes the fact that the extended care patients pay for their accommodations and that a license is required and therefore the extended care home is a business not acceptable in a residential area.

The Zoning Regulations expressly permits a homeowner to take in roomers or boarders to supplement his income. In my opinion, the financial arrangements between the members of a family as defined is irrelevant and I would uphold the Zoning Administrator as long as the total occupancy does not exceed six persons.

In any event, I would interpret the above cited sections of the Zoning Regulations to permit an extended care facility in the R-1 through R-3 Districts when there are not more than two extended care patients involved as roomers or boarders. In the R-4 District, rooming houses and boarding houses are permitted as a matter of right and any number of patients could be accommodated.

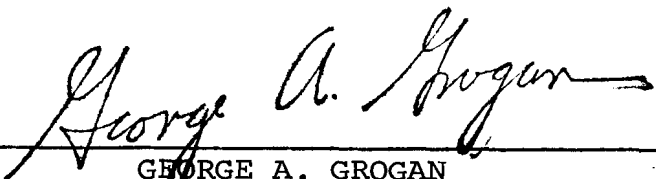
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Licenses are required of many professional persons who may operate out of their homes without a certificate of occupancy in single family districts provided they also meet the requirements of the Home Occupation definition. Even though such persons as architects, engineers, real estate agents, doctors and dentists may only use their homes as a part time basis, they supplement their incomes by working at home.

I also dissent from the majority action placing a 120 day limit on the stay of its action.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED:

By: 
GEORGE A. GROGAN
Secretary of the Board

Before the Board of Zoning Adjustment, D.C.

PUBLIC HEARING - November 17, 1971

Application No. 10876 - Rock Creek East Neighborhood League, Inc.,
appellant.

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee.

Upon consideration of the decision and order in Personal Care Home Operators Association, Inc., et al., v. D.C. Board of Zoning Adjustment, Appeal No. 6328, decided November 21, 1972, D.C. Court of Appeals wherein the Court remanded the cause to the Board with directions that the Board vacate its Order of February 3, 1972.

Upon consideration of Zoning Commission Order No. 53 dated October 6, 1972 whereby the Zoning Regulations were amended to specifically provide for personal care homes in the District of Columbia thereby rendering this appeal moot.

It is hereby on motion duly made, seconded and carred, that the following Order of the Board was entered at the meeting of March 20, 1973.

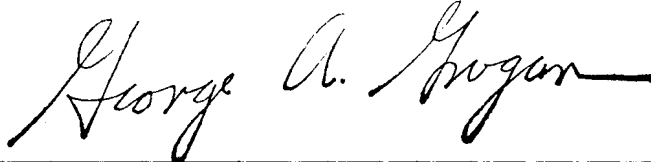
ORDERED:

1. The Order of the Board effective February 3, 1972 is hereby vacated.
2. This appeal is hereby dismissed as moot.

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED

By: _____



GEORGE A. GROGAN
Secretary of the Board

April 4, 1973